



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Phoenix District

Agua Fria National Monument

21605 North 7th Avenue

Phoenix, Arizona 85027

www.blm.gov/az/



In Reply Refer To:
4130 (AZP03000)

9107 9 2 130

Kelton Cattle Co.
23120 E. Kelton Ranch Rd.
Mayer, AZ 86333
Cert Mail: 7011 1570 0000 7962 6107

NOTICE OF PROPOSED DECISION

Indian Creek Riparian Management DOI-BLM-AZ-P030-2013-0001-EA

Dear Mr. and Mrs. Kelton:

The BLM is proposing to change livestock management in the Indian Creek riparian area located in the Box Bar Allotment (#06063). The BLM believes that changes to management are necessary for the continued existence of the Gila chub and other wildlife species dependent upon Indian Creek for habitat.

BACKGROUND

This proposed project is located along Indian Creek in the Agua Fria National Monument T. 11 N., R. 3 E., Sections 25, 26, 35 and 36. The reach of Indian Creek that is located within the project area is designated as critical habitat for the endangered Gila chub (*Gila intermedia*). The BLM consulted with the US Fish and Wildlife Service (Service) on the existing Phoenix Field Office Planning Decisions and Associated Activities on Gila chub and its critical habitat (Biological Opinion 02-21-05-F-0409). Management actions covered under this Biological Opinion (BO) allow for livestock grazing from November 1 through March 1 in pastures that contain Gila chub critical habitat as long as threshold levels of bank alteration (not to exceed 25%), woody riparian species utilization (not to exceed 30%) and herbaceous riparian utilization (not to exceed 50%) are not exceeded. However, these thresholds have been routinely met or exceeded within a few weeks of livestock use in Indian Creek.

Excessive streambank alteration and overutilization can reduce habitat quality for Gila chub. In 2011, the stream was assessed as functional at risk by an interdisciplinary team of resource

specialists. The rationale for this rating was that the system was not vertically stable, there was little recruitment of riparian tree species, and there was excessive erosion. Herbaceous streambank vegetation cover was sparse in places; however, vegetative cover was much greater within a livestock exclosure that currently exists on Indian Creek.

PUBLIC INVOLVEMENT

This project was publicly scoped by posting a scoping letter on the BLM website for 30 days and sending letters or emails to all individuals and organizations on our interested publics list. Comments were received from Western Watersheds Project and the Arizona Game and Fish Department. This proposed project was also scoped internally with BLM specialists and managers. This project was also introduced and discussed at the BLM Phoenix District monthly NEPA coordination meeting. Site visits and subsequent scoping and collaboration took place with the Agua Fria National Monument Natural Resource Specialist and Biologist. BLM staff met with the grazing lessee for the Box Bar allotment and discussed the proposed action. Another site visit with the permittee and BLM staff took place to discuss potential livestock crossing areas. External scoping also took place with AGFD in a site visit to Indian Creek with the AGFD Region VI Nongame Biologist and Habitat Specialist.

US FISH AND WILDLIFE SERVICE CONSULTATION

The US Fish and Wildlife Service were consulted about the proposed exclosure fence and water gap corridors for the Indian Creek riparian area. In response to the consultation, a new Biological Opinion (#02-21-03-F-0409-R2) was released for the Box Bar Allotment. New species conservation measures associated with the proposed exclosure fence and livestock grazing will be added to the Box Bar grazing lease terms and conditions.

PROPOSED DECISION

After reviewing the analysis presented in the EA, the Finding of No Significant Impact (FONSI), and carefully considering the comments and input received through the consultation, cooperation, and coordination (CCC) process with Interested Publics, and the affected lessee, it is my proposed decision to implement the Proposed Action described in Section 2.2 of the EA, including the design features and standard operating procedures common throughout all relevant alternatives as described in Section 2.1, and as follows:

Common Design features and Standard Operating Procedures

Cultural Resources

All impacts to cultural resources shall be avoided thus preventing potential adverse effects to all cultural resources (and monument objects). The proposed exclosure fence line has been surveyed by a qualified BLM archaeologist to a class III level for cultural resources. No cultural resources were found within the footprint of the proposed fence line.

Biological Resources

Construction would take place between October 1 and April 30 to avoid impacts to spawning Gila chub, nesting yellow-billed cuckoo, and other migratory birds. The BLM would continue to monitor the effects of management actions in the Indian Creek riparian area. Within the Indian Creek riparian area is a Multiple Indicator Monitoring study area that the BLM uses for quantitative and qualitative monitoring of riparian conditions. There are also several Proper Functioning Condition sites located in the riparian area the BLM uses to monitor riparian function and condition. The BLM would also continue to study the upland areas of the allotment at various Assessment, Inventory, and Monitoring (AIM) locations.

Exclosure Fence

A four-strand barbed wire fence with a smooth bottom wire would be constructed to exclude livestock from an approximate 1.3 mile reach of critical habitat in Indian Creek. This fence would adjoin an existing fenced area that currently excludes livestock from 0.7 miles of Indian Creek. The proposed fence would be built in the upland habitat near the stream and would run roughly parallel to the stream. Break-away (water gap) fences would be installed where the fence crosses the stream. Drilling may be required to set posts in bedrock areas – especially when constructing water gap fences. Hand drills would be used for drilling. Two crossing areas would be constructed to allow livestock to cross from one pasture to another and for livestock watering. The crossings would consist of two parallel wire fences spanning across the stream, adjoining the exclosure fence in the upland habitat. The crossing areas depicted on the map are located in areas where the stream channel is armored by large rock or bedrock, making these areas more resistant to livestock impacts. The width of the crossings would be approximately 60 feet wide. The crossing areas would have gates in the upland habitat so that the crossings could be closed when they are not in use or when the water gap fences are damaged.

Once the Indian Creek exclosure would be constructed, livestock would have access to the upland vegetation in adjacent pastures and minimal access to critical habitat within the riparian area. The designation of the Bald Hill and Cross S pastures would change from riparian pastures to upland pastures, making them available year round livestock grazing without seasonal use restrictions. Once the exclosure fence and water gaps would be constructed, livestock would be permanently excluded from approximately 98% of the critical habitat and the associated riparian habitat.

The exclosure fence will be inspected and repaired, if necessary, prior to turning cattle out into pastures containing Gila chub critical habitat by the lessee. The water gap fences will also be inspected and repaired, if necessary, after flood events when cattle are in pastures containing Gila chub critical habitat by the lessee. The exclosure fence will be inspected twice per year when cattle are present in the pastures containing Gila chub critical habitat. The exclosure fence and water gap inspections will be requirements added to the terms and conditions of the grazing

lessee's lease. To avoid impacts to spawning Gila chub and nesting yellow-billed cuckoo, construction would take place between October 1 and April 30.

TERMS AND CONDITIONS TO BE MODIFIED ON THE CURRENT GRAZING LEASE

Winter grazing use only (November 1 to February 28) shall be permitted on the riparian pastures (River, Big Bug, Bald Hill, and Cross S).

NEW TERMS AND CONDITIONS TO BE ADDED TO THE GRAZING LEASE

Winter grazing use only (November 1 to February 28) shall be permitted in the River and Big Bug riparian pastures.

No livestock grazing use will be allowed in the Indian Creek riparian enclosure.

The Indian Creek enclosure and water gaps must be inspected twice a year by the lessee. All fences and/or water gaps that need to be repaired must be repaired by the lessee before turning any livestock into the Bald Hill or Cross S pastures.

RATIONALE

The livestock grazing stream bank alteration and utilization stipulations of the previously released Biological Opinion for the Indian Creek riparian area are being met sooner than expected on almost a yearly basis. This is shown in the Multiple Indicator Monitoring (MIM) data that has been collected and analyzed by the BLM in recent years. After grazing stipulations are met in the Indian Creek riparian area, livestock are removed from the entire Bald Hill pasture by the lessee. This action removes a significant amount of land adjacent to the Indian Creek riparian area that would be otherwise available to livestock grazing.

An additional fence that excludes livestock from accessing critical reaches of the stream would make livestock management in the riparian area easier for the lessee; but would also make much of the upland area in the Bald Hill pasture available to grazing without stipulations for riparian management. The proposed action would also likely increase Gila chub habitat productivity through increased vegetation abundance and water holding capacity in the stream by excluding livestock grazing in the riparian area. The overall functionality of the Indian Creek riparian ecosystem would likely be improved through the implementation of the proposed action.

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, as amended, effective July 11, 2006, which states in pertinent subparts and sections:

§ 4100.0-8 The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans...Livestock grazing activities and management actions approved by the authorized officer

shall be in conformance with the land use plan as defined at 43 C.F.R. 1601.0-5(b).

§4110.3 The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer.

§4130.2(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

§4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

§4110.3-2(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

§4110.3-3(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §§ 4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 of this part, except as provided in paragraph (b) of this section.

§4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

§4130.3-1(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

§4130.3-1(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§4130.3-2 The authorized officer may specify in grazing permits or leases other terms and

conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans...

§4130.3-3 Following consultation, cooperation, coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 or this part. To the extent practical, shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

§4160.2 Any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§4180.2(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines.

APPEAL OF THE DECISION

Any applicant, permittee, lessee, or other affected interest may protest this proposed decision under 43 CFR §§ 4160.1 and 4160.2 within 15 calendar days after receipt of this proposed decision. Protests may be either in person or in writing to Bureau of Land Management, Hassayampa Field Office ATTN: D. Remington Hawes, Field Manager, 21605 North 7th Avenue, Phoenix, Arizona 85027.

The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error. In absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice in accordance with 43 CFR § 4160.3, unless otherwise provided in the proposed decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal and petition for stay of the final decision pending final determination on appeal under 43 CFR §4160.4, §4.21 and must follow the requirements set forth in §§ 4.470 through 4.480 of this title. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 calendar days following receipt of the final decision, or 30 calendar days after the proposed decision becomes final.

The appeal shall comply with the provisions of 43 CFR 4.470 and state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. When filing a petition for stay, the appellant must show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors the stay.



D. Remington Hawes
Field Manager
Hassayampa Field Office

10/26/2015

Date

Enclosed: CCC list for the Box Bar Allotment